

Tri-State Regional Special Education Law Conference
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Legal Ethics and Special Education Disputes (Parts 1 & 2)

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These sessions will focus on recent professional responsibility and attorney discipline decisions from the Iowa, Kansas, and Nebraska supreme courts. Participants will apply these decisions to recurring problems in special education negotiation and litigation. Session intended for, but not restricted to, attorneys and law office staff.

I. Introductory Matters

1. *Please come and go as you please.* These ethics sessions are offered as a courtesy to you. If you need to meet with clients, adverse counsel, or take a call, please feel free to step out. If there are other sessions that you wish to attend, please feel free to switch sessions. In addition, I am on the planning committee, and we work hard to bring in great speakers. Feel free to go hear them!
2. *Please ask questions.* These sessions, to work (especially on a Friday afternoon in the fall), must be interactive. Share your experiences. Challenge my conclusions and observations. Learn from each other.
3. *Ethics hours are something that you must do, so make the most of them.* Ethics hours are like stretching out after a run. You may not feel like doing it, but you'll be hurting if you don't.
4. *What is an "hour"?* In Iowa and in Nebraska CLE rules, an "hour" is sixty minutes. In Kansas, an "hour" is fifty minutes. Kansas rounds down to the nearest half hour, so Kansas attorneys (even if they stay through both parts) will only get two hours. For the benefit of Kansas attorneys, I will announce at fifty minutes in each session and at one hundred minutes in the second session.

II. Attorney Discipline Data from the Three Sponsor States

A. Kansas Data

1. Total Number of Complaints: 718
507 informally handled (including 365 referrals to other sources)
211 cases opened (133 dismissed, 78 resulting in imposition of discipline)
2. Most frequent rule violations
 - a. Rule 1.3: 14 violations
 - b. Rule 8.4(d): 9 violations
 - c. Rule 8.4(b): 7 violations
 - d. Rule 1.15: 7 violations
 - e. Rule 1.4: 6 violations
 - f. Rule 8.4(c): 6 violations

B. Nebraska Data

1. 304 total grievances, with formal action in 83 cases.
2. 2011 discipline: 5 private reprimands, 3 public reprimands, 3 suspensions, and 5 disbarments.
3. 70 percent of grievances involve attorneys who are admitted for more than 16 years.
4. 55 percent of grievances involve administrative law and family law.
5. 46 percent of grievances involve allegations of neglect.
6. 80 percent involve sole practitioners and two person law offices.

C. Iowa Data

1. 431 complaints, with 254 coming from clients.
2. 512 violations alleged, with 332 being dismissed.
3. The most common violation alleged and most common violation proven was "neglect or incompetence."
4. 25 opinions by the supreme court.

III. Kansas Cases

A. Attorney Discipline Cases

1. *In re Alberg*, 295 Kan. 795 (2013)

Alleged sexual relationship with family law client, conversion of client property, false fee reports, criminal conduct.

Rules violated:

Discipline imposed:

2. *In re Collins*, 285 Kan. 1084 (2012)

Failure to file tax returns for nine years. Noncooperation with the discipline process.

Rules violated:

Discipline imposed:

3. *In re Weaver*, 294 Kan. 751 (2012)
Loan modification, trust account.

Rules violated:

Discipline imposed:

4. *In re Johnson*, 294 Kan. 575 (2012)
Conflict, billing dispute, practicing under suspension.

Rules violated:

Discipline imposed:

B. Other Cases

1. *MEG Properties & Investments, LLC ex rel. Auten v. Gilchrist*, No. 106,697 (Kan. Ct. App. Aug. 17, 2012) (unpublished)
Attempt to disqualify adverse counsel as a potential witness, in a question about enforceability of an agreement.

Disposition:

2. *In re Marriage of Johnston*, No. 106,037 (Kan. Ct. App. May 4, 2012) (unpublished)

See *In re Alberg*, above.

3. *Wright v. Kansas State Bd. of Educ.*, 46 Kan. App. 2d 1046 (2012)
A former attorney, disbarred because of a felony conviction, wants to be a Kansas teacher. He has completed his teaching degree. What happens next?

Disposition:

IV. Nebraska Cases

A. Attorney Discipline Cases

1. “Violating the oath of office and....”

2. *State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Cording*, 285 Neb. 146 (2013)

Vice conviction. Solicitation of undercover officer in a city park.

Rules violated:

Discipline Imposed:

3. *State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Beltzer*, 284 Neb. 28 (2012)

Trust account violations.

Rules violated:

Discipline Imposed:

4. *State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Walocha*, 283 Neb. 474 (2012)

Suspension for failure to pay bar dues. Practice under suspension.
Unlicensed practice of law.

Rules violated:

Discipline imposed:

B. Other Cases

1. *Mid America Agri Products/Horizon, LLC v. Rowlands*, 286 Neb. 305 (2013)
Side-switching expert.

Disposition:

2. *Casey S. v. Tarah L.*, No. A-12-265 (Neb. Ct. App. Dec. 31, 2012) (unpublished)
Disqualification of counsel.

Disposition:

3. *In re Interest of Emerald C.*, 19 Neb. App. 608 (2012), *review denied*.
Alleged failure to allow a parent's guardian ad litem to participate in a termination of parental rights case.

Disposition:

V. Iowa Cases

A. Attorney Discipline Cases

1. *Iowa Supreme Court Attorney Discipline Bd. v. Laing*, 832 N.W.2d 366 (Iowa 2013)
Overbilling of conservatorship for over thirty years.

Rules violated:

Discipline imposed:

2. *Iowa Supreme Court Attorney Discipline Bd. v. Marks*, 831 N.W.2d 194 (Iowa 2013)

Competence, diligence, probate delinquencies, conduct prejudicial to the administration of justice.

Are probate delinquencies violations of the rule forbidding undue delay in litigation?

Rules violated:

Discipline imposed:

3. *Iowa Supreme Court Attorney Discipline Bd. v. Roush*, 827 N.W.2d 711 (Iowa 2013)

Drug convictions.

Rules violated:

Discipline imposed:

4. *Iowa Supreme Court Attorney Discipline Bd. v. Qualley*, 828 N.W.2d 282 (Iowa 2013)

Forming LLC to bid against client at a sheriff's auction.

Rules violated:

Discipline imposed:

5. *Iowa Supreme Court Attorney Discipline Bd. v. Cannon*, 821 N.W.2d 873 (Iowa 2012)

Boating while intoxicated; OWI; possession of a controlled substance.

Rules violated:

Discipline imposed:

6. *Iowa Supreme Court Attorney Discipline Bd. v. Stowers*, 823 N.W.2d 1 (Iowa 2012)

Violation of discovery protective order. Alleged extortion. Conduct prejudicial to the administration of justice.

Rules violated:

Discipline imposed:

7. *Iowa Supreme Court Attorney Discipline Bd. v. Taylor*, 814 N.W.2d 259 (Iowa 2012)

Failure to notify client of dismissal of appeal.

Rules violated:

Discipline imposed:

8. *Iowa Supreme Court Attorney Discipline Bd. v. Humphrey*, 812 N.W.2d 659 (Iowa 2012)

Neglect of client matters.

Rules violated:

Discipline imposed:

9. *Iowa Supreme Court Attorney Discipline Bd. v. Schall*, 814 N.W.2d 210 (Iowa 2012)

Failure to file taxes. Altering a plea agreement. False statements.

Rules violated:

Discipline imposed:

10. *Iowa Supreme Court Attorney Discipline Bd. v. Weaver*, 812 N.W.2d 4 (Iowa 2012)

OWI 3rd; harassment.

Rules violated:

Discipline imposed:

11. *Iowa Supreme Court Attorney Discipline Bd. v. Hearity*, 812 N.W.2d 614 (Iowa 2012)

Practicing while under suspension. Misrepresenting to a court about discipline status.

Rules violated:

Discipline imposed:

12. *Iowa Supreme Court Attorney Discipline Bd. v. Ries*, 812 N.W.2d 594 (Iowa 2012)
Failure to refund client trust account.

Rules violated:

Discipline imposed:

13. *Iowa Supreme Court Attorney Discipline Bd. v. Van Ginkel*, 809 N.W.2d 96 (Iowa 2012)

Neglect in administration of a probate matter.

Rules violated:

Discipline imposed:

14. *Iowa Supreme Court Attorney Discipline Bd. v. Cunningham*, 812 N.W.2d 541 (Iowa 2012)

Violation of discovery order; violation of rule requiring withdrawal because of physical or mental incapacity; neglect of client matters.

Rules violated:

Discipline imposed:

15. *Iowa Supreme Court Attorney Discipline Bd. v. Boles*, 808 N.W.2d 431 (Iowa 2012)

Shoddy billing and accounting.

Rules violated:

Discipline imposed:

B. Other Cases

1. *Sticks, Inc. v. Hefner*, No. 12-0633 (Iowa Ct. App. Feb. 13, 2013) (unpublished)
Imposition of sanctions vs. “good faith extension of the law.”

Disposition:

2. *Sabin v. Ackerman*, No. 12-0627 (Iowa Ct. App. Jan. 9, 2013), further review granted, and argued before the supreme court on September 9, 2013.
Malpractice. Duty to estate’s beneficiary?

Disposition:

3. *State v. Clay*, 824 N.W.2d 488 (Iowa 2012)
Relationship between Rules of Professional Conduct and ineffective-assistance-of-counsel claims under *Strickland v. Washington*, 466 U.S. 668 (1984).

Disposition: